



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

October 7, 2004

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Federal Communications Commission
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Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: FCC Docket No. 04-179, Unbundled Access to Network Elements WC
Docket No. 04-313 and Review of the Section 251 Unbundling Obligations
of Incumbent Local Exchange Carriers, CC Docket No. 01-338

Dear Ms. Dortch:

Enclosed please find the Connecticut Department of Public Utility Control's comments filed in response to the Federal Communications Commission's Order and Notice of Proposed Rulemaking released on August 20, 2004, in the above noted docket.

Sincerely,

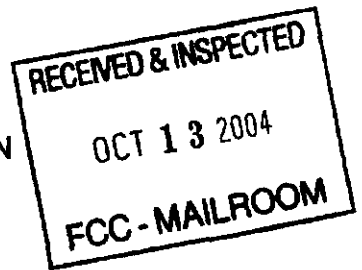
DEPARTMENT OF PUBLIC UTILITY CONTROL

Louise A. Rickard (BME)
Louise Rickard
Acting Executive Secretary

Enc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter of)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

COMMENTS OF THE CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

Donald W. Downes
Chairman

Jack R. Goldberg
Vice-Chairman

John W. Betkoski, III
Commissioner

Linda Kelly
Commissioner

Anne C. George
Commissioner

October 7, 2004

Connecticut Department of
Public Utility Control

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COMMENTS OF THE CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

I. INTRODUCTION AND SUMMARY

The Connecticut Department of Public Utility Control (CTDPUC) hereby submits the following comments in response to the Federal Communications Commission's (Commission) Order and Notice of Proposed Rulemaking (NPRM) released on August 20, 2004, in the above noted proceeding. In the NPRM, the Commission recognized the various state commissions' efforts in implementing the Triennial Review Order¹ and encouraged the states to file summaries of their respective proceedings, highlighting factual information that would be relevant under the guidance of USTA II.² The

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (Triennial Review Order or TRO).

² *United States Telecom Ass'n v FCC*, 359 F.3d 554 (DC Cir., 2004).

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Commission also encouraged the states to summarize their efforts to develop batch hot cut processes.³

As discussed in greater detail below, in conducting its mass market switching trigger analysis, the CTDPUC has determined that in terms of switching, competitive local exchange carriers (CLEC) are impaired at the wire center level in the Southern New England Telephone Company's (Telco) Connecticut service territory. The CTDPUC has also determined that the Telco was unable to satisfactorily demonstrate that the CLECs were not impaired on various transport routes and loop locations that it identified in Docket No. 03-09-01PH01 DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Trigger Analysis and Mass Market Cutoff. Finally, in reviewing the Telco's Hot Cut/Batch Cut process, the CTDPUC has determined that its current processes are sufficient to address customer migrations from the Telco to CLECs.

II. DISCUSSION

A. BACKGROUND

In light of the Commission's Triennial Review Order, the CTDPUC initiated Docket No. 03-09-01 DPUC Implementation of the Federal Communications Commission's Triennial Review Order,⁴ to address the Commission's unbundling

³ NPRM, ¶15.

⁴ Docket No. 03-09-01 was intended by the CTDPUC to be a three-phase investigation and subsequently renamed as Docket No. 03-09-01PH01, DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Trigger Analysis and Mass Market Cutoff; Docket No. 03-09-01PH02, DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Hot Cut/Batch Cut Process Analysis; and Docket No. 03-09-01PH03, DPUC Implementation of the Federal Communications Commission's Triennial Review Order – Operation and Economic Analysis. However, in response to the Telco's determination that it would not pursue a potential deployment case, the CTDPUC, on March 15, 2004, ceased its examination in Phase Three of this investigation. With the

requirements for individual network elements discussed in the TRO and whether they should continue to be offered as unbundled network elements (UNE) by the Telco and Verizon New York Inc. (Verizon) to their competitors.⁵

On October 8, 2003, the CTDPUc issued its Procedural Order in Docket No. 03-09-01 outlining its approach in implementing the Commission's requirements prescribed in the TRO. In that order, the CTDPUc noted the Commission's requirement that the states investigate the need to continue making certain UNEs available after taking into account market specific variations, including considerations of customer class, geography and service. The CTDPUc also determined that it would only address the provisioning of UNEs in the Mass Market.⁶ No party objected to the CTDPUc's decision to accept the Commission finding of no impairment for those network elements as they related to the Enterprise Market.

In addition, the CTDPUc indicated that it would examine the availability and utility of current cutover processes employed by the Telco to ascertain the need for changes to comport with the TRO. The CTDPUc was of the belief that any finding

DC Circuit Court's issuance of USTA II, Docket No. 03-09-01 was closed by CTDPUc Decisions on July 21, 2004.

⁵ By letters dated October 9, 2003 and November 7, 2003, Verizon indicated that since its service territory was outside of that which was to be studied in Docket No. 03-09-01, it would not actively participate in this proceeding. Verizon also stated that it did not intend to challenge the Commission's impairment determinations as they applied to its Connecticut service territory and that it would continue to provide unbundled, mass-market switching, transport and loop network elements in a manner consistent within current practices, subject to the results of any regulatory or judicial decisions regarding these matters. Verizon October 9, 2003 Letter, pp. 1 and 2. On December 10, 2003, in light of Verizon's decision not to challenge the Commission's impairment determinations, the CTDPUc informed Verizon that it would no longer be considered a party to Docket No. 03-09-01.

⁶ Pursuant to the TRO, the states were required to conduct a proceeding within 90 days to rebut the FCC's national standard that relieved ILECs of the obligation to provide switching for Enterprise Market customers served by high-capacity loops (such as DS-1) in light of the FCC's finding that they would suffer no impairment by such an action. TRO, ¶¶451 and 455. Within the 90-day timeframe, states were afforded the opportunity to petition the FCC to waive the finding of no impairment. *Id.*, ¶455.

reached in the matter of "triggers" was contingent upon the availability and utility of a cutover process that was capable of supporting substantially higher volumes of activity than currently experienced by the Telco and the competing carriers. Therefore, the cutover process would have to be forward-looking and must serve as the basis for any CTDPUc conclusion that it might make regarding the availability of competitive alternatives in a market.

After giving consideration to the parties' comments, the CTDPUc determined in part, that during Docket No. 03-09-01 it would:

- consider the market definition for its granularity analysis to be the ILEC's wire center;
- consider the responsibility for showing that the ILEC should be relieved of unbundling obligations for any Mass Market must be assumed by the ILEC;
- adopt a three-track approach to address the issues in this proceeding concluding with a single decision by the CTDPUc no later than June 29, 2004;
- require the Telco to file at the outset of Docket No. 03-09-01, a declaration of what "showings" it intended to make in these matters.

B. DOCKET No. 03-09-01PH01, DPUC IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER – TRIGGER ANALYSIS AND MASS MARKET CUTOFF

During Docket No. 03-09-01PH01, the CTDPUc developed an administrative record that was based in part on the filing of responses to data requests made by CTDPUc staff and the parties, two days of hearings and the filing of late-filed exhibits, briefs and reply briefs. During this phase of Docket No. 03-09-01PH01, the CTDPUc

conducted an analysis of mass market switching and the deployment level of transport facilities.

1. MASS MARKET SWITCHING

In conducting its granularity analysis of mass market switching, the CTDPUC determined that such an analysis was to be conducted at the ILEC wire center level. In making this determination, the CTDPUC believed that the Commission intended in the TRO that such an analysis be performed at the lowest reasonable level possible. The CTDPUC believes that since data is often collected and compiled at the wire center level as well as the fact that it is the principal point of interconnection with competitive providers, that the wire center represented a consistent point of analysis and comparison for this examination. Additionally, by adopting a definition that directly corresponded to the principal building block of the ILEC's network, the CTDPUC was confident that it would have sufficient empirical evidence upon which it can form its judgment regarding the state of competitive presence in Connecticut.

In reviewing the data presented during Docket No. 03-09-01PH01, the CTDPUC determined **** BEGIN CONFIDENTIAL ** ** END CONFIDENTIAL****.

2. TRANSPORT FACILITY DEPLOYMENT

The CTDPUC also undertook a thorough and deliberate review of the non-impairment conclusions regarding the deployment of transport facilities reached by the Telco during Docket No. 03-09-01PH01. In particular, the CTDPUC reviewed the number of transport routes satisfying the TRO self-provisioning and wholesale triggers.

During Docket No. 03-09-01PH01, the Telco provided under protective order transport routes that it believed met the Commission's self-provisioning and wholesale triggers.⁷

The competing providers were not readily forthcoming in describing their provisioning methods. The Telco submitted evidence based on its business records that focused on competitive transport facilities that were connected to its central offices by fiber-based collocation. The Telco also confirmed these routes by reviewing carrier websites to determine the services offered to customers served from these central offices.

Based on its review of the administrative record of Docket No. 03-09-01PH01, the CTDPUc determined that there was evidence of growth in the deployment in the number of these facilities since passage of the federal Telecommunications Act of 1996 (Act). That fiber was primarily deployed in urban and suburban high-density corridors and served a variety of customers. The CTDPUc also determined that competing providers have not deployed their transport facilities to follow the same physical paths as the Telco, although there was overlap in some urban areas.

Additionally, the CTDPUc is of the opinion that the Telco was unable to satisfactorily demonstrate that the transport route from ****BEGIN CONFIDENTIAL**** ****END CONFIDENTIAL****. Based on these responses, neither of these carriers can be counted as an entity that has self-provisioned dark fiber along this route for trigger purposes. If these carriers are not counted as self-provisioners, the Telco is incorrect that three entities have self-provisioned dark fiber along this route. Accordingly, the

⁷ CTDPUc Docket No. 03-09-01PH01 Telco Witness Smith Testimony, confidential Attachments JGS-9 and JGS12, copies of which are appended hereto as Attachments 2 and 3, respectively.

CTDPUC concludes that the Telco has not demonstrated that the route from Bridgeport to Stamford meets the FCC's self-provisioning trigger for dark fiber dedicated transport.

Further, the CTDPUC is of the opinion that the Telco has not met its burden that the Bridgeport to Stamford route meets the wholesale trigger for dark fiber dedicated transport. **** BEGIN CONFIDENTIAL** **END CONFIDENTIAL**** Accordingly, none of these carriers can be counted toward the wholesale trigger for dark fiber dedicated transport for this particular route. Further, the Telco cannot demonstrate that there are the requisite number of two wholesalers who are "operationally ready" and willing to provide dark fiber transport along this route. Nor has the Telco demonstrated that there are at least two wholesalers who make dark fiber "widely available" along this route.

Since the Telco has failed to demonstrate that the route from Bridgeport to Stamford meets either the self-provisioning trigger or the wholesale trigger for dark fiber transport, the FCC's national finding of impairment for dark fiber dedicated transport along this route should remain.

Similarly, the Telco asserted that it was entitled to a finding of non-impairment for the route from EHRTCT01 (East Hartford) to HRFRCT03 (Hartford) and the route from HRFRCT03 (Hartford) to WTFDCT00 (Waterford) on the grounds that these routes satisfy the wholesale trigger for dark fiber dedicated transport. ****BEGIN CONFIDENTIAL** **END CONFIDENTIAL**** Accordingly, the FCC's presumption of impairment for the routes from i) East Hartford to Hartford and ii) Hartford to Waterford must remain in place and dark fiber transport along these routes must remain unbundled and offered at total service long run cost (TSLRIC) based rates.

Therefore, based on the administrative record of Docket No. 03-09-01PH01, the CTDPUc concludes that the self-provisioning transport triggers outlined in the TRO were satisfied for only eight routes listed in Attachment JGS-9 to Telco Witness Smith's testimony. Similarly, the CTDPUc is of the opinion that the Telco has satisfied only 24 of the wholesale transport triggers for the routes listed in Attachment JGS-12 to Telco Witness Smith's testimony.

C. DOCKET NO. 03-09-01PH02, DPUC IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER – HOT CUT/BATCH CUT PROCESS ANALYSIS

During Docket No. 03-09-01PH02, the CTDPUc developed an administrative record to review the Telco's hot cut/batch cut process that was based in part on responses to party data requests, two days of hearings and the filing of briefs and reply briefs by the parties.

CTDPUc notes that prior to Docket No. 03-09-01PH02, the Telco's hot cut process was last reviewed in Docket No. 02-02-02, DPUC Investigation of the Southern New England Telephone Company's Baseline Hot Cut Procedures. In Docket No. 02-02-02, the CTDPUc examined the Telco's revised Frame Due Time (FDT) process for local number portability (LNP) and determined that those procedures would reduce the migration time period and the resulting amount of time that an end user was without telephone service.⁸ The CTDPUc also determined in Docket No. 02-02-02 that the revised process established a procedure whereby CLECs would be notified when end user migrations were completed. In its October 30, 2002 Decision in Docket No.

02-02-02, the CTDPUc concluded that the Telco's revised FDT process offered a satisfactory resolution to those issues raised by Conversent. In addition, the CTDPUc noted that the rates and charges associated with this process were last examined in Docket No. 00-03-19, DPUC Review of the Southern New England Telephone Company's Studies of Unbundled Network Elements Non-Recurring Costs, and were acceptable.

The central questions in Docket No. 03-09-01PH02 were to address whether the Telco's current hot cut process was sufficient to meet the demands placed on the system if CLEC customers were migrated due to the elimination of UNE-P and whether it could be done at a reasonable cost. Considerable testimony was presented on the issue of what was a reasonable estimate of the volume of migrations if UNE-P was eliminated. The Telco provided proprietary estimates of the current number of UNE-P lines in Connecticut and estimated the UNE-P demand by year-end 2004. Although the numbers were proprietary, the Telco estimated a robust growth in UNE-P lines. During Docket No. 03-09-01PH02, AT&T applied New York City estimates to Connecticut even though it admitted that it had little experience with the Connecticut hot cut process because it had only recently entered the Connecticut market. The CTDPUc does not believe that AT&T's analysis of the New York City market was useful or relevant because that market is much more concentrated with higher subscriber density than that typically found in Connecticut. This higher density also provided competitors an advantage in reaching more potential customers than in Connecticut. The CTDPUc

⁶ This docket was initiated in response to concerns raised by Conversent with the Telco's LNP FDT process with 1-10 loop migrations during the January 9, 2002 oral arguments in Docket No. 01-02-09,

also believes that the Connecticut market is different as indicated by AT&T's attempt during Docket No. 03-09-01PH02 to adjust the New York City data. Additionally, the CTDPUC believes that the Telco's estimates were reasonable because those estimates reflected the actual and expected Connecticut competitive market.

The administrative record of Docket No. 03-09-01PH02 indicates that the Telco has three processes for hot cuts: (1) the FDT hot cut wherein the Telco and CLECs effect the FDT hot cut at a pre-arranged time; (2) a Coordinated Hot Cut (CHC) whereby the hot cut is coordinated with real-time communication between the Telco and CLEC; and (3) "Project" hot cuts. The FDT and CHC processes are used for conversions of 24 or fewer lines. The Telco considers hot cuts of more than 25 lines to be a "Project," which need to be negotiated by the CLEC and the Telco. None of the parties to Docket No. 03-09-01PH02 provided any data or testimony that the Telco's existing process impaired them in the Connecticut market.

In the opinion of the CTDPUC, construction of a model related to some unknown hypothetical volume estimates that are unrelated to the current Connecticut market is not useful. The Connecticut telecommunications market consists of approximately 50% facilities-based service providers (that do not require hot cuts) and 50% UNE-P based providers that use hot-cuts. The Telco has developed a process to address all levels of expected demand and has employed the platform that the FCC encourages, namely, that the Telco negotiates with CLECs for hot cuts for more than 25 lines.

AT&T and MCI prefer a non-manual process for hot cuts which the CTDPUC supports when conditions warrant. To be useful however, this process must be economical since all carriers using the system will be responsible for a portion of the costs associated with its implementation. Nevertheless, the record of Docket No. 03-09-01PH02 did not support a conclusion that there was a mechanical process available at a reasonable cost.

While the Telco has implemented its own hot cut process, the CTDPUC believes that the Telco should examine the SBC Communications, Inc. (SBC) 12-state batch hot cut proposal. A process that is particularly useful to other SBC states may also be useful in Connecticut. The goal for switching customers and carriers should be seamless, quick and at as low a cost as possible given existing technology and processes.

Finally, an issue raised during Docket No. 03-09-01PH02 was the nonrecurring charges associated with migrating customers and whether they were reasonable. According to the Telco, 80% of its requests for customer migration involved the FDT process. The existing Telco's cost of providing the FDT process were reviewed and the nonrecurring charges were approved by the CTDPUC in Docket No. 00-03-19. The nonrecurring charges associated with the other hot cut procedures employed by the Telco are based on a TSLRIC analysis and are reasonable. Neither AT&T nor MCI presented any substantive evidence addressing the Telco's cost of conducting hot cuts. Consequently, the CTDPUC is of the opinion that the Telco's costs for hot cuts have been thoroughly reviewed during several proceedings and are reasonable.

III. CONCLUSION

Based on the administrative records of Docket No. 03-09-01PH01 and Docket No. 03-09-01PH02, the CTDPUc is of the opinion that the CLECs are impaired at the wire center level in the Telco's service territory in the state. The Telco has been able to satisfactorily demonstrate that the self-provisioning transport triggers outlined in the TRO were satisfied for only eight routes and only 24 of the wholesale transport triggers were met. Finally, the CTDPUc concludes that the Telco's Hot Cut/Batch Cut process is sufficient to address customer migrations from the Telco to CLECs.

Respectfully submitted,

CONNECTICUT DEPARTMENT OF
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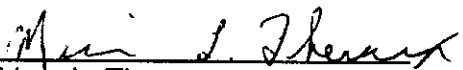
Linda Kelly
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October 7, 2004

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CERTIFICATION


Miriam L. Theroux
Commissioner of the Superior Court